

**MEMORIALIZING RESOLUTION OF THE BOROUGH
OF SEASIDE HEIGHTS PLANNING BOARD
APPLICATION NO. 2022-11
RESOLUTION NO. 2022-24**

WHEREAS, the Borough of Seaside Heights Planning Board is a duly constituted Planning Board pursuant to N.J.S.A. 40:55D-23 *et seq.* and the Borough Seaside Heights Land Use Ordinance Section 246-22; and has all the powers of a Board of Adjustment pursuant to N.J.S.A. 40:55D-25c.(1); and

WHEREAS, the Applicants, LOUISA KOSTIHA and JOSEPH KOSTIHA, Matthew Heagen, Esq., appearing on behalf of the Applicants, have applied to the Borough of Seaside Heights Planning Board for Minor Subdivision Approval necessitating bulk and use variances for premises located at 308 Franklin Avenue, also known as Block 28, Lot 6, as designated on the Official Tax Map of the Borough of Seaside Heights; and

WHEREAS, the Applicants have provided proper notice to all property owners within 200 feet and all other pertinent parties; and

WHEREAS, the Applicants have submitted to the Board an Affidavit of Publication in proper form; and

WHEREAS, the Applicants are requesting Minor Subdivision Approval to subdivide the subject lot into three conforming residential building lots with regard to area necessitating bulk and use variances for the proposed new Lots 6.01, 6.02 and 6.03 as follows: a one-foot side yard setback to the eastern property line wherein 2 feet is required and an elevation of 46.25 feet wherein the maximum elevation is 35 feet; and

WHEREAS, the Planning Board has considered the Application and the documents filed by the Applicants and the Board having reviewed the Applicants' Application for Development at the hearing held on May 25, 2022; and

WHEREAS, the Planning Board, after carefully considering all the evidence provided, has made the following findings of facts:

1. All those exhibits contained in the Board's file and discussed during the hearing are hereby considered evidence for the purpose of this Application.

2. The property is located in the Low-Density Residential Zone District which permits single-family residential dwellings.

3. Daniel Wheaton was duly sworn and testified as follows:

A. Mr. Wheaton is a licensed architect and professional planner in the State of New Jersey.

B. Mr. Wheaton testified that the subject property is located on the northern side of Franklin Avenue. He testified that the subdivision will provide for three conforming buildable lots.

C. Mr. Wheaton testified that the proposal is to have a one-foot side yard setback to the east property line of each property.

D. Mr. Wheaton testified the single-family residential dwellings will have four bedrooms and three on-site parking spaces. Mr. Wheaton testified that two public parking spaces on Franklin Avenue will be removed and the Applicants will comply with any and all Ordinance requirements with regard to fees to be paid to the Borough of Seaside Heights for the removal of these public parking spaces.

E. Mr. Wheaton testified that from studies of other properties on Franklin Avenue there will be no shadowing to the rear properties for more than a half hour difference with regard to the height requested as relates to exposure to the sun.

F. Mr. Wheaton testified there shall be a 15-foot rear yard setback and a 20-foot front yard setback for each of the proposed residential dwellings.

G. Mr. Wheaton testified there are two separate and detached residential dwellings located on the property which do not comply with the Zoning Ordinance requirements of the Borough of Seaside Heights. Mr. Wheaton testified that these houses will be demolished as part of the Application for Development and construction of three new houses.

H. Mr. Wheaton testified that there shall be no fences to be constructed between proposed Lots 6.03 and 6.02 and between Lots 6.02 and 6.01.

I. Mr. Wheaton testified that the Application for Development is consistent with the Borough's Zone and Master Plan with regard to developing single-family residential dwellings on conforming lots. Mr. Wheaton testified that this promotes the appropriate densities in the municipality.

J. Mr. Wheaton testified that the single-family residential dwellings will be consistent with other houses in the neighborhood.

K. Mr. Wheaton testified that the Application for Development will promote appropriate flood and fire safety.

L. Mr. Wheaton testified that the new single-family residential dwellings will meet all Construction Codes and FEMA Requirements as to base flood elevation.

M. Mr. Wheaton testified that the variances can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the Zone Plan and Zoning Ordinances.

4. The meeting was open to the public for comment. Prairie Rugilo was duly sworn and gave testimony that the height of the houses of 42 feet should be reduced to conform to the Zoning Ordinance. In response, Mr. Wheaton gave further testimony that the height of the houses with regard to the variance portion is to the rear of the house and the front of the house will be more in compliance with the Zoning Ordinance.

WHEREAS, the Borough of Seaside Heights Planning Board has determined that the purposes of the Municipal Land Use Law would be advanced by deviation from the Zoning Ordinance Requirements and the benefits from the deviation will substantially outweigh any detriment; and

WHEREAS, the Borough of Seaside Heights Planning Board has determined that the variances requested by the Applicant can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the Zone Plan, Master Plan and/or Zoning Ordinance of the Borough of Seaside Heights for the following reasons:

1. The Application for Development promotes a desirable visual environment through creative development techniques and good civic design and arrangement.
2. The Application for Development provides for the appropriate light, air and open space with regard to adjacent properties.
3. The Application for Development secures safety from fire and flood.

4. The Application for Development proposes construction of single-family residential dwellings consistent with the current base flood elevation and FEMA requirements and is a substantial benefit for the general welfare of the community.

5. The Application for Development proposes to conform to the on-site parking requirements for the Borough of Seaside Heights which is a benefit to the community and general welfare.

NOW, THEREFORE, BE IT RESOLVED by the Borough of Seaside Heights Planning Board on this 6th day of June, 2022, that the Application of the Applicants, LOUISA KOSTIHA and JOSEPH KOSTIHA, for Minor Subdivision Approval shall be GRANTED, subject to the following conditions:

1. New Lots 6.01, 6.02 and 6.03 are granted variances for a side yard setback to the east property line of one foot and an elevation for the construction of a single-family residential dwelling of 46.25 feet on each lot.

2. The Applicants shall comply with the Borough of Seaside Heights Ordinances with regard to the removal of two public parking spaces and pay any fees required.

3. Each newly created lot shall provide for three on-site parking spaces.

4. The Subdivision Plan submitted to the Board shall be amended to show the dimensions of the front, side and rear yard setbacks of each of the proposed residential dwellings which shall be not less than a 15-foot rear yard setback and 20-foot front yard setback and side yard setbacks as testified to and proposed by the Application for Development.

5. There shall be no fences to be constructed between newly proposed Lots 6.03 and 6.02 and Lots 6.02 and 6.01.

6. The Applicant shall comply with the Board Engineer's letter dated May 9, 2022 with regard to paragraphs D. Technical Revisions and/or Corrections and E. Recommendations.

7. The Applicant shall substantially adhere to the plans submitted during the hearing. A substantial deviation from the approved plan shall require further review and approval by the Borough of Seaside Heights Planning Board. A *de minimus* change that the Construction Official and/ or Zoning Official deems to be "cosmetic" in nature and does not increase an encroachment for which a variance was granted or changes the character of the structure, or violate a specific condition, may be approved by the appropriate Official.

8. The Application shall provide site performance bonds and inspection fees in accordance with the Borough of Seaside Heights ordinances, or any other law or regulation as required.

9. This action of the Board constitutes a final approval for this Application and shall expire in accordance with the Municipal Land Use Law and within one year of the date of this Resolution as outlined in the Borough's Ordinances.

10. The approval is conditioned on the Applicant's payment of all real estate taxes due to date.

11. The approval is conditioned on the Applicant's payment of any outstanding fees and escrows required by this application.

12. The Applicant shall obtain any and all other approvals or waivers required by law from any other regulatory agency, including, but not limited to the New Jersey State Division of Alcoholic Beverage Control, New Jersey Department of Environmental Protection, CAFRA or a Letter of No Interest, compliance with FEMA and local flood plan regulations, the Ocean County Planning Board, Ocean County Soil Conservation District, the Borough Sewer and Water Department, the New Jersey Department of Transportation and/ or a Letter of No Interest, the local fire official, the Borough's beaches, stormwater management, and flood damage prevention Ordinances.

13. No building permit shall be issued for any additional construction located on the subject property, even if said application conforms to all zoning ordinances, without review and approval of this Board.

14. The Applicant shall construct at Applicant's sole cost and expense all dwellings and structures reflected on the Application and set forth in this Resolution.

15. The Applicant shall use building materials that meet all Borough building codes and requirements.

Moved by: Robert Triano

Seconded by: Paul Firetto

ROLL CALL

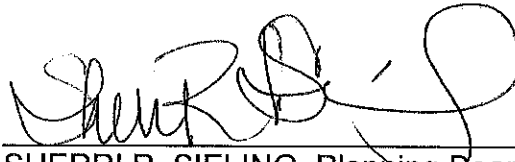
Those in Favor: Robert Triano, Paul Firetto, Steve Sanzone, David Witherspoon

Those Opposed: None

Those Abstaining: None

CERTIFICATION

I, SHERRI R. SIELING, Planning Board Secretary of the Seaside Heights Planning Board, hereby certify the above Resolution to be a true and correct copy of a resolution adopted by the Seaside Heights Planning Board on June 6, 2022.

A handwritten signature in black ink, appearing to read "Sherri R. Sieling", written over a horizontal line.

SHERRI R. SIELING, Planning Board Secretary